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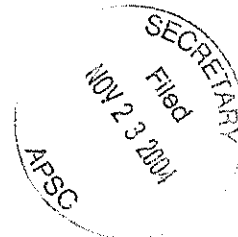
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November 23, 2004

BY HAND DELIVERY

Mr. Walter Thomas
Secretary
Alabama Public Service Commission
RSA Union Building
8th Floor
100 N. Union Street
Montgomery, Alabama 36104

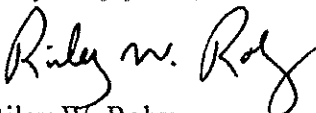


Re: Proposed Revisions to the Price Regulation and Local Competition Plan; Docket
No. 28590

Dear Mr. Thomas:

Enclosed for filing are the original and ten copies of the Comments of ITC^DeltaCom
Communications, Inc., in the above-referenced matter.

Very truly yours,


Riley W. Roby

RWR:dpe
Enclosures

cc: Counsel of Record

**BEFORE THE ALABAMA
PUBLIC SERVICE COMMISSION**

In Re: Proposed Revisions to the)
Price Regulation and Local Competition) Docket 28590
Plan)

COMMENTS OF
ITC^DELTA.COM COMMUNICATIONS, INC.

ITC^DeltaCom Communications Inc., d/b/a ITC^DeltaCom and d/b/a Grapevine ("DeltaCom") pursuant to the Alabama Public Service Commission's ("Commission") *Order Seeking Comments On the Revised ATRP* ("Order") issued November 5, 2004, in the above-captioned matter, hereby submits these Comments.

The Commission has sought comment concerning changes to the Revised Alabama Telecommunications Regulation Plan (“Revised ATRP”).

I. Introduction and Background.

The Price Regulation Plan (the “Plan”) that is currently in effect was the result of a series of round table workshop discussions. The Plan covers numerous issues including, but not limited to, the regulation of prices for certain services, service quality, interconnection services, tariff requirements, reporting requirements, IXC and reseller regulation and requirements for new entrants in the local market. On January 6, 2004, DeltaCom, AT&T, MCI, BellSouth, the non-Bellsouth ILECs, and the Attorney General (“AG”) filed comments with the Commission. BellSouth remains the dominant provider of local services in their territory and the dominant and often monopoly provider of wholesale services to the CLEC industry. These realities require the continuation of asymmetric regulation that ensures the continued development of a competitive market and protects against anticompetitive practices by the incumbent. The Revised ATRP has the effect of regulating the dominant incumbent, BellSouth,

“less” and the emerging CLEC competitors “more”. This is antithetical to the principles of the original price regulation plan and contrary to any rational approach to enabling competition in a formerly monopoly local service market that remains dominated by the legacy provider who still retains an almost 90% market share. Moreover, the dominant retail incumbent is also the dominant wholesale supplier to virtually all of its landline competitors and is the largest provider of wireless service in its franchise service area. The magnitude of BellSouth’s dominance in retail, wholesale and wireless services demands policies that provide for adequate regulation and oversight of the incumbent and less regulation of emerging CLEC competitors. To this end, the Commission previously conducted hearings on promotion and win back practices by BellSouth. Those hearings included expert testimony by interested parties, including a recommendation for an industry code of conduct. To date, no order has been issued in that proceeding and the expert testimony provided by the companies and subjected to cross examination at hearing has been set aside in favor of a new proposed plan by BellSouth. Contrary to assertions that market conditions have changed significantly since the promotion/winback hearings, the reality is that BellSouth and the other Bell companies have methodically advocated for policies at the FCC that will ensure fewer competitors and less competition. It is more important than ever that the Commission adopt a code of conduct and ensure that inappropriate winback activities and illegal retention marketing is addressed in the ATRP.

Finally, while the Commission can take preliminary steps in adopting a new regulatory regime for the industry, no final action should be taken until the FCC issues permanent UNE rules and the Commission has had time to evaluate the impact of those rules on the competitive landscape for Alabama. The decision on permanent rules is

expected at the December 15, 2004 meeting of the FCC and the companies will then be required to negotiate change of law amendments to implement the new rules in their respective interconnection agreements. Disputes regarding these amendments will be brought before this Commission for resolution before new amendments can be approved. The new rules are expected to have a major impact on UNE availability, CLEC business plans and ultimately the future of local exchange competition. Based on the existing uncertainties, it would be premature for the Commission to significantly change the existing regulatory regime for the local exchange industry without a thorough knowledge and understanding of the new rules. Moreover, prior to adopting major changes to existing plans, hearings should be held to allow all parties the opportunity for due process on these issues.

Additionally, DeltaCom has the following comments on various portions of the plan based in large part on discussions held in the workshops. DeltaCom respectfully requests that the Commission hold a public hearing on this matter.

II. Parts IV and V (CLEC and IXC Regulation Plans)

Consistent with the discussion in the workshops, DeltaCom respectfully suggests that CLEC's be divided into two categories using the following definitions:

1. Competitive Local Exchange Company "CLEC": A certificated provider of local exchange services that competes with the incumbent local exchange carrier.
2. Small CLEC: CLEC's serving less than 5% of the total access lines in service in the state.
3. Large CLEC: CLEC's serving 5% or more of the total access lines in service in the state.

This approach will allow asymmetric regulation of Small CLEC's and provide for more regulation when a CLEC achieves the scale of a Large CLEC. DeltaCom recommends that the Small CLEC's be regulated under the IXC provisions of the plan until they attain the 5% access line threshold. Additionally, as a safeguard, the Commission should retain the right to designate a specific Small CLEC for Large CLEC regulation in those cases where customer complaints or some other circumstances warrant closer scrutiny of the company. This approach will provide for lighter regulation of the emerging competitors, full CLEC regulation when a company reaches a significant presence in the state, and a safeguard alternative that can be selectively applied when necessary. Moreover, by avoiding more detailed regulation of smaller companies, the Commission staff can concentrate on appropriate oversight, enforcement and mediation activities.

In summary, the Commission does not need to apply the full regulatory requirements to smaller companies and new entrants that do not have significant market share. With our proposed changes, the Commission retains the ability to handle consumer complaints and monitor company conduct as well as apply full regulation if warranted.

III. Part I (BellSouth Plan)

There are no rules or regulations regarding unbundled network elements, resale discounts or availability of CSAs for review and resale. The BellSouth plan should include wholesale requirements for pricing of network elements and resale as well as wholesale service quality measures and remedies. An assertion of Commission authority to continue BellSouth unbundling requirements at just and reasonable rates

should be included as a prerequisite to this or any other plan predicated on the presence of competition for local exchange services.

IV. Part II and III (ILEC Regulation Plan)

DeltaCom has no recommended changes to Parts II and III at this time.

V. Conclusion

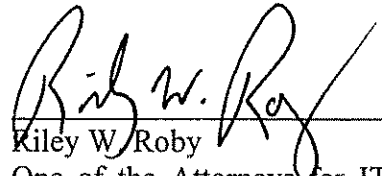
In conclusion, DeltaCom recommends the following specific revisions to the staff proposal and an incremental process for moving to the adoption of a new regulatory structure for the industry:

- (1) Add suggested definitions for CLEC, Large CLEC, Small CLEC and IXC.
- (2) Add Small CLEC exemption from full Large CLEC regulation and apply IXC rules to Small CLEC's.
- (3) Add safeguard language allowing Commission to selectively apply Large CLEC regulation to Small CLEC's if warranted by special circumstances.
- (4) Adopt the industry code of conduct.
- (5) Add wholesale language to the plan that ensures the continued availability of UNEs from BellSouth at just and reasonable rates, terms and conditions.

DeltaCom recommends that the Commission first adopt the industry code of conduct and any other plan provisions that will not be impacted by FCC orders issued in the near future, but defer adoption of the BellSouth plan and any other aspects of the staff proposal that are likely to be impacted by the new FCC UNE rules and schedule hearings as soon as possible after the new UNE rules have been implemented.

The existing plan has served the industry and consumers well for many years. The contemplated changes should only be adopted after deliberate and thoughtful consideration and the opportunity for all parties, including regulated companies and consumers, to fully participate in the process.

Respectfully submitted this 23rd day of November, 2004.

A handwritten signature in black ink, appearing to read "Riley W. Roby", is written over a horizontal line.

Riley W. Roby
One of the Attorneys for ITC^DeltaCom
Communications, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon the following individuals in this cause by placing the same in the U.S. Mail, postage prepaid and properly addressed this 23rd day of November 2004.

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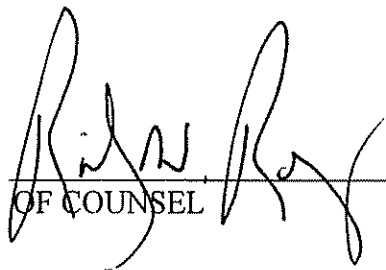
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